

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL)
DEVELOPMENT PERMIT ISSUED BY)
THE TOWN OF GIG HARBOR TO NICK)
J. TARABOCHIA AND GEORGE ANCICH)
NICK J. TARABOCHIA and)
GEORGE ANCICH,)
Appellants,)
v.)
TOWN OF GIG HARBOR,)
Respondent,)
JOSEPH J. ANCICH, JOHN ANCICH,)
PETER ANCICH, and MARIE IVANOVICH,)
Intervenors.)

SHB No. 77-7

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

PER W. A. GISSBERG:

This matter was heard by the Shorelines Hearings Board, W. A. Gissberg, presiding, Robert E. Beaty, Robert F. Hintz and Gerald D. Probst on May 18 and 19, 1977, in Gig Harbor, Washington.

Appellants were represented by their attorney, Nick Markovich, Jr.;

1 intervenors by John A. Paglia; respondent by David H. Johnson.

2 Having heard the testimony and examined the exhibits and being
3 fully advised, the Board makes and enters the following

4 FINDINGS OF FACT

5 I

6 George A. Ancich and Nick J. Tarabochia (hereinafter appellants)
7 are the owners of a small parcel of uplands and abutting tidelands
8 (hereinafter site) at Gig Harbor. A residence was built on the site
9 in 1925 and is still used as such. The appellants have been engaged
10 in commercial fishing since at least 1942 and they have constructed
11 on the site over the years since that time, a dock, pilings, floats,
12 net shed, boathouse, and other structural improvements, all for the
13 primary purpose of facilitating the moorage and servicing of six purse
14 seine and gill net commercial fishing vessels and two tenders owned by
15 them and others. A few pleasure boats also occasionally tie up to the
16 float. However, appellants exact a moorage fee from only two pleasure
17 boat owners. All but that portion of the development on the site and
18 the adjacent navigable water which is the subject matter of this
19 dispute were constructed prior to December 4, 1969.

20 A Coast Guard vessel having a five to nine man crew also utilizes t
21 site as moorage and a Coast Guard office is located on the upland proper

22 II

23 In November of 1971, after the effective date of the Shoreline
24 Management Act, appellants constructed a substantial development,
25 within the meaning of the Act, without procuring a permit
26 for that purpose. That construction consisted of two pilings and a

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1 6 foot wide by 130 foot long float with two perpendicular smaller
2 finger floats built upon the navigable waters of the bay, and connected
3 up to the pre-existing facilities located toward and extending from
4 the shore.

5 III

6 Not until 1976 did appellants seek to legalize the 130 foot long
7 float and piling construction when they sought a substantial develop-
8 ment permit by their application which, on its face, represented that
9 the proposed use of the property was for a "private commercial dock
10 for commercial fishing vessel moorage." Although the shoreline master
11 program adopted by respondent, Town of Gig Harbor (hereinafter Town)
12 required that an application for alterations to existing marina
13 facilities be accompanied by estimates of future uses, the size of
14 watercraft to be moored therein and an environmental assessment, such
15 were not supplied by appellants. Nonetheless, the Town Planning
16 Commission recommended that the permit be approved and the Town Council
17 after giving careful consideration to the matter following two public
18 hearings, granted a permit for the two pilings and approximately a
19 63 foot length float instead of the 130 foot length sought by appellants.
20 The Town Council was concerned about the variety of uses already on the
21 site and had been advised, albeit incorrectly, that it was not empowered
22 to lawfully restrict the use of the new facility to commercial fishing
23 vessels, as contrasted with pleasure boats. Apparently the Town
24 believed that by reducing the length of the float there would be room
25 for fewer commercial vessels to be served and hence appellants would
26 be forced to exclude pleasure boat moorages notwithstanding that

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1 appellants had refused to so agree when asked whether they would be
2 willing to do so.

3 IV

4 By virtue of the Town's 1968 Zoning Code requirements, the site
5 is in a W-1 district in which residential and other uses are permitted,
6 including¹

7 B. Moorage and docking facilities for pleasure boats
8 and commercial vessels and accessory docks and buildings,
in accordance with requirements of Chapter 17.76.

9 However, the Zoning Code requires for a W-1 district a minimum lot
10 area of 9,000 square feet for one dwelling unit and,

11 B. Other uses shall have a lot area of not less than
12 ten thousand square feet.²

13 Also, the Zoning Code requires off-street parking³ in a W-1 district
14 as follows:

15 A. For residences, one off-street parking space . . .
for each dwelling unit.

16 B. For other uses, one off-street parking space shall
17 be provided for each two thousand square feet of floor area
18 or for each four employees, whichever is the larger space
requirement, and one parking space for each boat moorage
stall.

19 Chapter 17.76.020 of the Zoning Code, which applies to moorage and
20 docking facilities in a W-1 Zone, requires that before a building
21 permit may issue it must appear that

22 B. Any moorage or wharf on private property must be at
23 least twelve feet from a side property line

24 1. Chapter 17.44.020 B. (Exhibit I-5)

25 2. Chapter 17.44.030 B. (Exhibit I-5)

26 3. Chapter 17.44.090

1 11.) New moorage facilities shall adhere to the Boat Moorage
2 portion of the Town's zoning ordinance.

3 Furthermore, the Master Program at page 9 requires, in effect, that
4 the marina use regulations be applied because "Alterations to existing
5 structures shall adhere to these use regulations which apply"

6 VII

7 The length of the entire facility as it extends waterward from
8 the line of high tide is approximately 387 feet and it terminates at
9 a point somewhere between the inner and outer harbor lines which have
10 been established by the State of Washington. The most reliable evidence
11 of the area in the upland lot is that computed by the Town for sewer
12 assessment purposes as 9,600 square feet. The entire moorage or wharf
13 is at least 12 feet from the upland side property lines extended water-
14 ward over the tidelands owned by appellants and over the beds of
15 navigable waters leased by them from the State of Washington.

16 VIII

17 At least nine automobiles can park on the site near the residence
18 thereon. At the present time, appellants have permission from a nearby
19 property owner to utilize his property for parking up to an additional
20 20 automobiles.

21 IX

22 Intervenor, Maria Ivanovich, owns property immediately west of
23 appellants. She hopes to extend the length of her existing dock so as
24 to render it serviceable for moorage at all tides.

25 Intervenor, Joseph, John and Peter Ancich, own property immediatel
26 easterly of appellants and told of their plan to construct and extend

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1 a float waterward from the existing dock for use as an all tides
2 marina.

3 While intervenors expressed their concern that the appellants'
4 float extension would or could interfere with navigational ingress and
5 egress to their respective docks, as now and hereafter constructed,
6 the fact is that appellants' facilities, for which they now belatedly
7 seek approval, have not interfered with intervenors' rights nor have
8 intervenors ever had cause to complain of such to appellants.

9 X

10 Any Conclusion of Law hereinafter stated which may be deemed a
11 Finding of Fact is hereby adopted as such.

12 From these Findings the Shorelines Hearings Board comes to these

13 CONCLUSIONS OF LAW

14 I

15 Appellants seek approval of the entire 130 foot float, while both
16 respondents and intervenors confine their arguments to that of upholding
17 the Town's action in limiting the float length to approximately 63 feet.
18 No request is made by intervenors for this Board to reverse the approval
19 of the 63 foot float permit. Thus, there is no issue as to the validity
20 of the permit which was granted by the Town.⁶

21 II

22 Appellants contend that the Town acted in a manner which was
23 arbitrary and capricious. We do not agree. We have found (see
24 Finding of Fact III) that the Town Council gave careful consideration

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26 6. The permit had not only the effect of cutting down on the
27 proposed length of the float, but also eliminated the two proposed
fingers on the east side.

1 to the matter. Furthermore, the evidence adduced at the hearing before
2 this Board shows that the Town's action was not a wilful and unreasonable
3 action in disregard of facts and circumstances. Caicola v. Dept. of
4 Social and Health Services, 17 Wn. App. 346.

5 III

6 Contrary to the opinion given to the Town, and upon which it relies
7 in not allowing the entire float, pleasure craft could lawfully and
8 expressly be prohibited from using the float. The application for the
9 permit sought permission to build a float which would be used for a
10 "private commercial dock for commercial fishing vessel moorage." As
11 this Board has frequently noted, the Shoreline Management Act authorizes
12 the regulation of both developments on and uses of property. Further-
13 more, a permit is limited to the construction and uses expressly
14 sought and represented in the application for the permit. Well
15 established principles of procedural due process notice requirements
16 compel that result.⁷ The public generally, the Town and any
17 citizen who has examined the application and noted the limited use to
18 which the property is to be put, has a right to rely on the
19 representation therein. If a permit simply authorizes a development
20 in general descriptive terms,⁸ the scope of the permit is of necessity
21 limited by the application. See Hayes v. Yount, 87 Wn.2d 280 (1976).

23 7. Barrie v. Kitsap County, 84 Wn.2d 579 (1974)

24 8. The instant permit states: ". . . a permit is hereby granted
25 to . . . undertake the following development: Maintain an existing
26 float and two pilings. . . ." (approximately 63 feet).

1 IV

2 The entire 130 foot float, without the fingers thereon, would be
3 consistent with the Shoreline Management Act, and the spirit and
4 intent of the adopted master program of the Town and the constitutionally
5 stated purpose of harbor lines areas for conveniences of navigation
6 and commerce.

7 V

8 Shoreline substantial development permits must also be consistent
9 with the underlying zoning requirements of the Town⁹ as well as the
10 Shoreline Management Act. The dry land lot area of appellants is
11 less than 10,000 square feet and the proposed facility is therefore
12 not consistent with the 9,000 square feet minimum lot size area require-
13 ments of Chapter 17.44.030B of the Town's Zoning Code. Accordingly, it
14 was proper for the Town to deny a permit for that portion of the float
15 which is in dispute. The automobile parking at and available for the
16 site may also be in conflict with the Zoning Code.¹⁰ Appellants'
17 argument that the result of the Town's action amounts to a variance from
18 the zoning requirements is without merit.

19 While this Board is of the opinion that the entire length of
20

21 9. RCW 90.58.360 Existing requirements for permits, certificates,
22 etc., not obviated. Nothing in this chapter shall obviate any
23 requirement to obtain any permit, certificate, license, or
approval from any state agency or local government.

24 10. In SHB 81, Morris v. Town of Gig Harbor, this Board found that
25 a similar development was consistent with the policy of the Shoreline
Management Act and the guidelines of the Department of Ecology, granted
the permit and required that one off-street automobile parking space be
provided for each boat moored at the private boat dock. At that time
there was no master program then in effect.

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1 appellants' proposed float is consistent with the Shoreline Management
2 Act and the spirit and intent of the Master Program of the Town, we
3 cannot ignore the plain requirements of the Zoning Code and the Piers,
4 Floats and Moorage section of the Master Program. Thus, we should not
5 grant appellants' requested relief even though we are of the unanimous
6 opinion that the greater float length, without the fingers thereon,
7 when conditioned for commercial fishing vessel moorage only, would
8 result in less congestion and interference with intervenors' docks as
9 now or hereafter constructed.

10 VI

11 The substantial development permit as granted and conditioned by
12 the Town should be affirmed.

13 VII

14 Any Finding of Fact which should be deemed a Conclusion of Law
15 is hereby adopted as such.

16 Therefore, the Shorelines Hearings Board issues this

17 ORDER

18 The permit as granted and conditioned by the Town of Gig Harbor
19 is affirmed.

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26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER . 10

1 DATED this 22d day of June, 1977.

2 SHORELINES HEARINGS BOARD

3 W. A. Gissberg
4 W. A. GISSBERG, Chairman

5 Robert E. Beaty
6 ROBERT E. BEATY, Member

7 Robert F. Hintz
8 ROBERT F. HINTZ, Member

9 Gerald D. Probst
10 GERALD D. PROBST, Member

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